IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1735 of 1987

For Approval and Signature:

Hon'ble MISS JUSTICE R.M.DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

MANILAL M PATEL

Versus

GELAJI KANAJI

Appearance:

MR GM AMIN for Petitioner

MR KV SHELAT for Respondents No. 1-2

MS KATHA GAJJAR, AGP for Respondent No. 3

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 16/01/2002

ORAL JUDGEMENT

#. The petitioner is the purchaser of the lands bearing Survey No.354/1 admeasuring 30 Gunthas and Survey No.354/3 admeasuring 22 Gunthas situated at Village Thaltej, Taluka - Daskroi, District Ahmedabad. The

respondents nos.1 and 2 are the original owners and vendors of the said lands. The petitioner had purchased the said lands from the respondents nos.1 and 2 in the year 1975. Mutation Entries Nos.5450 and 5522 evidencing the said transfers were entered in the 'Record of Rights'. The said sale and the Mutation Entries were taken into revision by the Prant Officer, Viramgam. Under notice dated 30th October, 1984 the petitioner and the respondents nos.1 and 2 were called upon to show-cause why the said sale which had been made in contravention of Sections 7 and 8 of the Bombay Prevention of Fragmentation and Consolidation of Holdings Act, 1947 (hereinafter referred to as 'the Act') should not be set aside and why the petitioner should not be summarily evicted from the said lands. The Prant Officer, Viramgam was, under his order dated 28th January, 1985, pleased to hold that the said lands were fragments within the meaning of Section 2(4) of the Act; that the said lands were not contiguous to the land bearing Survey No.353/1; that the said lands were not irrigated lands. He, therefore, held that the transfer made in favour of the petitioner was in contravention of the provisions of the Act. The said transfer was, therefore, liable to be set aside in exercise of power under Section 9 of the Act. He, accordingly, set aside the aforesaid Mutation Entries Nos.5450 & 5522 and directed the respondents nos.1 and 2 to pay penalty of Rs.150=00 for each of the said transfers and to remove the petitioner from the possession of the land. Feeling aggrieved, the petitioner preferred appeal before the State Government. The State Government [Deputy Secretary (Appeals), Revenue Department] was, under its order dated 22nd December 1985, pleased to dismiss the appeal. Feeling aggrieved, the petitioner has preferred the present petition.

#. The above referred orders made by the authorities below have been challenged on the grounds that the petitioner was the owner of the land bearing Survey No.353/1 situated at Village Thaltej, which was contiguous to the above referred Survey Nos.354/1 and 354/3. The petitioner, therefore, was entitled to purchase the said pieces of land without obtaining previous permission as envisaged under Sections 7 or 8 of the Act. It is further submitted that the said lands are situated within 2 kms. of the limits of the Ahmedabad Municipal Corporation and are exempted from application of the provision of the Act. It is also contended that the said lands were irrigated lands and were not a "fragment" within the meaning of Section 2(4) of the Act. The impugned orders are, therefore, not sustainable and

deserve to be quashed and set aside.

#. It is not disputed that the said lands have been entered as fragment in the 'Records of Rights'. Section 7 of the Act provides, inter alia, that "no person shall transfer any fragment in respect of which a notice has been given under sub section (2) of Section 6 except to the owner of a contiguous survey number or recognised subdivision of a survey number." Section 8 thereof provides that "no land in any local area shall be transferred or partitioned so as to create a fragment." Section 8AA of the Act imposes restriction on partition of land so as to create a fragment. Sub section (1) of Section 9 of the Act provides that "the transfer or partition of any land contrary to the provisions of this Act shall be void." Sub section (2) thereof imposes a liability, inter alia, over such transferor to pay fine. Sub section (3) thereof empowers the Collector to order summary eviction of any person unauthorizedly occupying or wrongfully in possession of, any land, the transfer or partition of which, either by the act of parties or by the operation of law, is void under the Act.

#. Be it noted that there is no challenge to the findings recorded by both the authorities below that the said pieces of land are fragment within the meaning of the Act. Be it noted that both the authorities below have recorded a concurrent finding in respect of the said pieces of land being a fragment within the meaning of the Act. It is further recorded that the land Survey No.354 was a whole piece of land, which appears to have been subdivided so as to create the lands Survey Nos.354/1 and 354/3. Such subdivision creating the fragment is also violative of Section 8 of the Act. Both the above referred findings have not been challenged in this petition. The petitioner's claim that his land Survey No.353/1 is contiguous to the lands Survey Nos.354/1 and 354/3 has also not been believed by both the authorities below. Even, before this Court the petitioner has failed to establish that at the relevant time he was the owner of a land contiguous to the said pieces of land. The transfer made in favour of the petitioner, thus, being in contravention of the provisions of the Act, the said transfer is void as envisaged under Section 9(1) of the Act.

#. As regards the time factor, this Court has time and again held that no limitation has been prescribed for taking such transfer in revision. The principle of initiating action within the reasonable time can not be invoked in case of transfers which are statutorily void.

The reference can be had to the judgments of this Court in the matters of KOLI NAGJIBHAI VARJAN v. STATE [1992(1) GLR 14] and PATEL JIVIDAS TRIKAMDAS & ORS. v. DISTRICT COLLECTOR, MEHSANA & ORS. [1996(2) GLR 688]. In view of the above referred judgments, the action initiated in the year 1984 with respect to the transfer made in the year 1975 in contravention of the provisions of the Act can not be invalidated merely on the ground of lapse of a considerably long time.

#. The petitioner has also failed to establish that the said lands were situated within 2 kms. from the limits of the Ahmedabad Municipal Corporation and were exempted from the provisions of the Act.

#. No other contention has been raised in this petition. Petition is dismissed. Rule is discharged. Interim relief is vacated. The parties shall bear their own costs.

16th January, 2002. (Ms. R.M. Doshit, J.)

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